

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE FIFTEENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION No. 16595 of 2004

Between:

B.Parishanna, s/o Maranna, aged 28 years,
r/o Alur Village and Mandal, Kurnool District.

..... PETITIONER

AND

- 1 The Commissioner for Cooperation, Government of A.P.,Hyderabad.
- 2 The District Cooperative Officer, Kurnool District at Kurnool.
- 3 The Divisional Cooperative Officer, Adoni, Kurnool District.
- 4 The Aluru Large Sized Co.op.Society, Alur, Kurnool District rep.,

by its Chairman/PIC

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of writ of mandamus declaring the impugned action of the 3rd respondent in issuing directions to the 4th respondent society to terminate the service of the petitioner and consequential action of the 4th respondent in terminating the service of the petitioner vide resolution dated 2-8-2004 without any notice or opportunity as highly illegal, arbitrary and violative of Art.14 and 21 of the Constitution of India apart from contrary to the provisions of A.P.Shops and Establishment Act and also contrary to the judgment reported in 1988 AIR SCW 3186 (Basudeo Tiwary Vs.Sido Kanhu University and consequently set aside the same.

Counsel for the Petitioner: MR.G.V.SHIVAJI

Counsel for the Respondent Nos.1 to 3: GP FOR COOPERATION

Counsel for the Respondent No.4: MR.P.LINGESWARARAO

The Court made the following:

ORDER:

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Challenging the resolution of the 4th respondent dated 02.08.2004 in terminating the services of the petitioner, the present writ petition is filed.

Considering the qualifications, the petitioner was appointed as an Attender on a temporary basis vide resolution dated 10.09.1995 passed by the general body of the

4th respondent society. The then Managing Committee after assessing the service of the petitioner, passed resolution dated 20.04.1996 for continuing him on consolidated basis. When the petitioner applied for junior diploma, the society sponsored him with the permission of Divisional Cooperative Officer and after completion of the training, the society treated the said period as duty. The Managing Committee enhanced the consolidated pay from Rs.855/- to Rs.1,485/-. Thereafter, he was appointed as a Clerk by way of promotion vide resolution dated 10.05.1998. Thereafter the society fixed his salary in the time scale pay which was approved by way of general body resolution, and the probation was declared with effect from 10.05.1998. Vide resolution dated 03.06.2000, due to increase in the price index, the petitioner was given revised pay. On 03.08.2004 when the petitioner attended the duty, he was simply issued a copy of impugned resolution dated 02.08.2004 directing not to attend the duties. As per the impugned resolution, the services of the petitioner have been terminated on the ground of Act 2 of 1994 as the appointment of the petitioner is contrary to the provisions of the said Act. As the appointment of the petitioner was made permanent by the general body of the Society, the person in-charge of the Committee has no jurisdiction at all to terminate the petitioner, as the petitioner has already been working as a permanent employee. The petitioner was not given any notice or opportunity before termination of his services. The impugned termination of service has been affected without any enquiry or opportunity to the writ petitioner.

Therefore, the provisions of the A.P.Shops & Establishment Act have been violated. Hence the present writ petition.

The 4th respondent society filed counter, stating that as per the Board resolution dated 20.04.1996, the then Managing Committee appointed the petitioner as substitute in the leave vacancy of Sri B.Mareenna, who was proceeded on leave. Therefore, the appointment is irregular and the authorities are instructed to remove the employees, who are appointed irregularly with effect from 25.11.1993, through the proceedings dated 02.07.2004 of the Divisional Cooperative Officer, Adhoni. As per Section 116 (c) of A.P.Cooperative Societies Act, 1964 (for short 'the Act'), the society shall fix the staffing pattern and pay scale for all the employees with the prior approval of the Registrar. The 4th respondent society has neither approved staffing pattern and pay scales nor obtained prior approval of the Registrar for appointment of the petitioner. The respondent society should incur the expenditure towards costs of the establishment within the limits of Section 116 (c) of the Act i.e. 2% of working capital or 30% of gross profit whichever is less. The finance position of the respondent society is running in loss. Therefore, the Registrar under Section 116(c) of the Act did not approve the appointment of the petitioner. As per the Minutes of the Society, the then Managing Committee was resolved to reinstate Sri B.Mareenna into service. Therefore, there is no possibility to consider the petitioner as a regular Attender. The appointment of the petitioner is irregular and contrary to the provisions of the Act, 1964. As per the provisions of Sec.31A(12) of the Act and as per the bye-laws and service regulations of the society, the person in-charge Committee of the respondent society has every right to have administrative control over the petitioner. The Society is running in losses till 2002-03. Therefore, the decision taken by the person in-charge committee of the petitioner is correct. Hence there are no grounds to interfere with the impugned proceedings and prays to dismiss the petitioner.

Sri G.V.Shivaji, the learned counsel appearing for the writ petitioner contended that the petitioner is governed by the bye-laws of the

respondent society and without any notice, the

4th respondent society passed resolution stating that the appointment of the petitioner is contrary to the Act 2 of 1994, and therefore, the principles of natural justice have been violated, that the Act 2 of 1994 which came into force with effect from 25.11.1993 has no application to the employees of the Society, and therefore, he prays to quash the same.

On the other hand, the learned Government Pleader appearing for the respondents 1 to 3 contended that the Act 2 of 1994 is applicable to the societies, that as the appointment of the petitioner is irregular and contrary to the staffing pattern, the 4th respondent passed a resolution to terminate the services of the petitioner, and the resolution passed by the Society cannot be challenged as it is premature because the competent authority has to take decision in pursuance of the resolution passed by the Committee. Hence there are no grounds to allow the writ petition.

The learned counsel appearing for the 4th respondent advanced arguments similar to that of the learned Government Pleader for Cooperation.

As seen from the counter allegations, the petitioner was appointed by the then Managing Committee of the 4th respondent by resolution dated 10.09.1995 on temporary basis as an Attender. As per the Board resolution dated 20.04.1996, the Managing Committee appointed the petitioner as a substitute in the leave vacancy of Sri B.Mareenna, Attender who was proceeded on leave. The said Mareenna was reinstated into service vide Board's resolution dated 10.05.1998. Therefore, the appointment of the petitioner cannot be said to be regular appointment as an Attender. He was inducted into leave vacancy as a substitute in the place of an Attender who was proceeded on leave for a period of nearly two years. Therefore, *prima facie*, the appointment of the petitioner is not in accordance with bye-laws of the Society and the Rules governed and the service conditions of the respondent society.

Under Section 116 (c) of A.P.Cooperative Societies Act, 1964 a Society shall have power to fix staffing pattern, qualification, pay scales and other allowances for its employees with the prior approval of the Registrar of the cooperative societies subject to the conditions that expenditure towards pay and allowance of the employee shall not exceed 2% of the working capital or 30% of the gross profit in a calendar year whichever is less. According to the respondents, the financial position of the society is running with losses. The impugned resolution shows that the appointment of the writ petitioner was contrary to the Act 2 of 1994 and thereafter his promotion as a Clerk declared as illegal, and therefore, the Committee passed resolution terminating the services of the writ petitioner. The said resolution is under challenge as in violation of principles of natural justice. For that purpose, the learned counsel for the petitioner placed reliance on an unreported judgment of this Court in W.P.No.7198 of 2003 and batch dated 06.11.2003, wherein this Court held that the Act 2 of 1994 has no application for the institution in which the petitioners are working. The above decision has no application to the present facts of the case because in pursuance of the resolution passed by the Committee, the authority has to issue necessary proceedings in accordance with law. Therefore, it is premature to challenge the resolution passed by the

4th respondent society. It is not shown that the person in-charge has no jurisdiction to pass the said resolution. Under Section 31A(12) of the A.P.Cooperative Societies Act and also as per bye-laws of the Societies and as per Regulation (3) of Service Regulations, the Committee of the 4th respondent has every right to have administrative control over the staff because the Committee is the appointment authority. There are no proposal from the 4th respondent society in respect of the staffing pattern and pay scales of the staff of the society, and prior approval of the Registrar has not been taken in appointment of the writ petitioner, are contrary to the Act 2 of 1994, and also to the provisions of the A.P.Cooperative Societies Act.

The petitioner was appointed on a temporary basis without payment of pay and allowances. However, long period he worked, he cannot claim as a regular service. His appointment is only purely a temporary that too on the leave vacancy. Since the Committee has taken a decision, the question of violation of principles of natural justice does not arise. Therefore, I do not see any grounds to interfere with the impugned proceedings.

The Writ Petition is, accordingly dismissed. No order as to costs.

Dated: 15.12.2004

Dsr

ASSISTANT REGISTRAR

To:

1. The Commissioner for Cooperation,
Government of A.P. Hyderabad

2. The District Cooperative Officer,
Kurnool District at Kurnool

3. The Divisional Cooperative Officer,
Adoni, Kurnool District

4. The Chairman/PIC,
The Aluru Large Sized Coop.Society,

Alur, Kurnool District

5. Two CCs to the Government Pleader
for Cooperation, High Court Premises,
Hyderabad (OUT)

6. Two CD copies.